the decisions of this Court and other courts of appeals. The interlocutory character of that decision heightens the need for review because the Section 1292(b) review process—which respondents initiated—has not "advance[d] the ultimate termination of the litigation" (28 U.S.C. 1292(b)), but instead has gone seriously awry and produced an erroneous intermediate appellate court ruling that, if left in place, would provide misleading guidance and force the district court to fashion a remedy based on fundamentally mistaken principles of law.[8]

Respondents contend (Br. 11) that the problems they now associate with immediate review outweigh the benefits, but that is not so. There is no realistic likelihood that, if the Court grants review, the district court would take any action that would moot the Court's resolution of the issue. Instead, the district court—which has already determined that it would benefit from appellate guidance on the disgorgement issue and is no doubt keenly aware of this petition for a writ of certiorari—would respect this Court's prerogatives and take no action that would otherwise compromise an orderly appellate process. Respondents' mootness and "awkwardness" concerns (Br. 15) are chimerical.

Instead, this case will likely follow one of two routes. If this Court *grants* review: (a) the Court would decide the case no later than June 2006 (and perhaps earlier); (b) the district court would take whatever action is necessary in response to the Court's decision and issue a final judgment promptly after this Court's resolution; and (c) the appeal process would go forward with the certified remedies questions fully resolved. If this Court *denies* review: (a) the district court would decide

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[8] Respondents, who obtained interlocutory review through "questionable tactics," see Pet. App. 42a-43a, 48a-49a (Tatel, J., dissenting), now contend that "[t]he reasons for interlocutory review by the D.C. Circuit no longer apply" because "[t]he trial is now over" and "the entire case is pending for decision before the district court." Br. 11. But the district court must still *decide* the case, and there are substantial "practical benefits" (*ibid.*) for the district court in knowing next year, rather than three or more years from now, whether it will need to receive additional testimony and briefing on remedies.

the liability and remedies issues, bound by a ruling that improperly restricts the remedies it may consider; (b) the appeal process would go forward, but the district court's remedial judgment would be infected with a fundamental error that would require a remand; and (c) if the Court then decides to correct the error, the inherent delays would ensure that any remand proceedings would not take place until well into the future and certainly no sooner than late 2008. See Pet. 26 n.10.

Given the two likely scenarios, and the fact that the court of appeals' questionable decision has already generated a conflict among the courts of appeals, this Court should review the court of appeals' decision now. That mistaken decision will not only prevent the district court from formulating appropriate remedies at this time and necessitate a future remand if it is corrected later, but it will continue to misdirect other courts and constrain the government's ability to seek full relief in future civil RICO cases. Prompt review by this Court accordingly would fulfill the overarching objectives of Section 1292(b)'s provision for interlocutory review: to resolve a "question of law as to which there is * * * difference of opinion," and to 'materially advance the *ultimate* termination of the litigation." 28 U.S.C. 1292(b) (emphasis added).

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For the foregoing reasons, and those stated in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted.

EDWIN S. KNEEDLER
*Acting Solicitor General*

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